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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

*Reserved on : 18<sup>th</sup> November, 2019*

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*Date of Judgment: 20\_November, 2019*

+ **MAT.APP.(F.C.) 214/2018 & CM. APPL. 34217/2018 & CM  
APPL 53384/2018**

RANJEET KAUR ..... Appellant

Through: Mr. Vijay Kinger, Advocate

versus

SARANJEET ..... Respondent

Through: Mr. Prabhjit Jauhar, Ms. Upasna Goel  
and Ms. Aishwarya, Advocates

**CORAM:**

**HON'BLE MR. JUSTICE G.S. SISTANI**

**HON'BLE MS. JUSTICE JYOTI SINGH**

**G.S. SISTANI, J.**

1. The present appeal has been filed under Section 19 of the Family Courts Act, 1984 against the judgment dated 22.01.2018 passed by the Family Court by which the petition filed by the respondent/husband seeking divorce under Section 13(1) (ia) of the Hindu Marriage Act, 1955 (hereinafter referred to as 'HMA') has been allowed and the marriage has been dissolved by a decree of divorce.
2. The necessary facts to be noticed for the disposal of the present appeal are that the marriage between the parties was solemnized on 20.11.1977, at Patel Nagar, New Delhi, as per Sikh rites and ceremonies. Three children were born from the said wedlock. The parties have been living separately since 1995. A petition under Section 9 of HMA was filed by the appellant/wife in the year 2008, a

compromise was arrived between the parties on 12.09.2008. The petition seeking divorce under Section 13(1) (ia) of HMA was filed by the respondent/husband on 01.08.2009.

3. The grounds on which the divorce was sought were that the appellant/wife was stated to be in an illicit relationship with one Mohd. Ahmad Ansari, a rickshaw puller, who used to drop the children of the appellant/wife and the respondent/husband to school. It is also pleaded by the respondent/husband that the appellant/wife was very cruel to the mother of the respondent/husband who was an old lady aged about 70 years to the extent that a complaint had to be lodged by the mother-in-law on 19.11.1993. It was further pleaded that the respondent/husband was shunted out by the appellant/wife in the year 1995. Moreover, the appellant/wife purchased a house from the respondent/husband's funds bearing no B-61, Gali no 18, Jitar Nagar, Delhi wherein she was keeping her paramour Mohd. Ansari. Further, the appellant/wife filed a petition under Section 9 of HMA, however a compromise was arrived on 12.09.2008. The appellant/wife also filed criminal complaints against the respondent/husband. A petition was also filed in this court alleging the fact that the respondent/husband had committed the murder of the son of the parties i.e. Amarpreet Singh. The appellant/wife also made allegations against the respondent/husband of having alliances with other women including the widow of their son and one Gyan Kaur.
4. The case set up by the respondent/husband was that he has made complaints dated 23.11.1993, December 1994, 29.12.1995, 22.06.1998, 22.07.1998, 27.07.1998, 28.07.1998, 29.07.1998,

25.07.2002 and 03.08.2002 against his wife alleging cruelties against him.

5. In her preliminary objections, the appellant/wife stated that the respondent/husband had filed the petition based on false and concocted incidents and that she never had an intimate relationship with the said rickshaw puller. On merits, she submitted that after the solemnization of their marriage, the respondent/husband raised unjustified demands for costly items and asked the appellant/wife for Rs.25,000/-; and that she was turned out of her matrimonial home. It was further submitted that the appellant/wife's father paid Rs.40,000/- to the respondent/husband. She also contended that her father helped in purchasing the house bearing no. 264, Gagan Vihar, Delhi. It was further submitted that in the year 2002, the respondent/husband left the appellant/wife and her daughters to fend for themselves and took their son Amarpreet Singh to live with him. For the last several years, the respondent/husband is living in Patparganj, Delhi where the appellant/wife has alleged that he has a flourishing business with two factories and he is keeping alliance with women. She denied the claims made by the respondent/husband that she had treated her mother-in-law with cruelty.
6. On 24.11.2010, the following issues were framed by the Family Court;
  - “1. Whether the respondent has, after the solemnization of the marriage, treated the petitioner with cruelty? OPP
  2. Relief.”
7. In support of his case, the respondent/husband examined himself as PW-1 and tendered his affidavit by way of evidence as Exhibit PW-1/A and relied upon documents viz copy of the police complaint

lodged by his mother against the appellant/wife on 19.11.1993 as Mark A; the police complaint filed by him on 23.01.1993 as Ex. PW-1/2, copy of complaint dated 29.12.1995 as Mark B and copy of proceedings u/s 107/151 CrPC against Mohd. Ansari as Mark C. The respondent/husband was also examined by the Family Court under order 10 CPC. In support of her case, the appellant/wife examined herself as RW-1 and tendered her evidence by way of affidavit Ex. RW-1/A.

8. The Family Court after examining the pleadings and evidence on record, noticed that in fact, cruelty had been made out as firstly, the appellant/wife had indulged in an intimate relationship with the said rickshaw puller and had continued to do so, even after objections from the respondent/husband and her family and secondly, she resorted to the character assassination of the husband and made unfound/ false allegations against him, putting the respondent through mental sufferings. She even stated that the respondent was responsible for the murder of their only son. The appellant/wife utterly failed to prove the allegations made by her and the respondent/husband was thus able to prove the issue in his favor that there was cruelty on part of the appellant/wife.
9. Mr. Vijay Kinger, learned counsel appearing on behalf of the appellant/wife submits that in order to prove the ground of cruelty, the respondent/husband has relied upon the photocopies of the complaints filed by him as well as by his mother against the wife/appellant herein. It is contended that the said complaints were not proved by the respondent/husband in accordance with Section 61, 63 and 65 of the

Indian Evidence Act, 1872. The counsel further contended that the entire case of the respondent/husband is premised on such complaints and thus in the absence of the complaints proved, the Family Court has erred in granting divorce. It is further contended that respondent/husband was examined as PW-1 before the Family Court and he has neither brought on record the original complaints nor record was summoned from the concerned Police Station in order to prove the same. In the absence thereof, the complaints cannot be read as part of the evidence as per Section 61 of the Indian Evidence Act, 1872. The learned counsel for the appellant/wife has relied upon the judgment rendered by the Hon'ble Supreme Court in ***Oriental Insurance Company Ltd. Vs Prem Lata Shukla and Others*** (2009) 1 SCC (CrI) 204 (SC)

10. It is further contended that the respondent/husband, in his testimony before the learned Principal Judge, could not prove the cruelty that was done at the hands of his wife/appellant. He has placed reliance on the examination-in-chief and the cross examination of PW-1 i.e. the respondent/ husband, the relevant portion of which is reproduced hereinunder:

“HMA 280/10

Examination-in-chief of PW-1 Shri. Saranjeet Singh dated 18.11.2011

*“The documents exhibited in the affidavit as “EX-PW1/1, EX-PW-1/3, EX-PW1/4 are de-exhibited and are marked as Mark A, B and C respectively”.*

Cross- examination of PW-1 Shri. Saranjeet Singh dated 18.11.2011

*“I do not have any document and also not able to produce any document which proves the handwriting and signature*

*of my mother except document filed in the Court as Mark A. I cannot produce any other person except me to prove the signatures of my mother as appeared on document Mark A. It is correct that the text of Mark A was not written by my mother but she put the signatures on it..”*

*“I do not have any knowledge as to where the Respondent q usually used to go in my absence. I have lodged Ex. PW- 1/2 with police authority and Mark B and complaints dated 25.07.2002, 22.06.1998, 29.06.1998, 22.07.1998, 28.07.1998, 02.09.2002 (the photocopies of these are available in the records).”*

*“Except my aforesaid complaints I do not have any other proof which can show the adulterous relationship between the respondent and said Ahmed Ansari.”*

*“It is correct that I have never seen the adulterous position between Respondent/Appellant and Ahmed Ansari because the door was always bolted from inside whenever the respondent and Ahmed Ansari remained in the room in compromising position.”*

*“It is correct that the said Ahmed Ansari was also remained on his said work to take my children from school to home and home to school. I could not remove said Ahmed Ansari from his work because whenever I tried the respondent used to call the police and harass me.”*

Cross- examination of PW-1 Shri. Saranjeet Singh dated 19.11.2011

*“It is correct that I have not taken any assistance of any person in the dispute of me and my wife because of social prestige. It is correct that I did not mention about the fact of unlawful intimacy between my wife and Ahmed Ansari in the letter EX-PW-1/2 is false one because there was no unlawful intimacy between my wife and Ahmed Ansari. It is wrong to suggest that my wife never maltreated to me”*

*“...I am the proprietor of one factory namely Bamra Engineering Works and also a Director in another company namely Bamra Machines and Tools Pvt. Ltd. I have no other running factory. (Vol. I am also Director in the company namely Micro Mould India Pvt. Ltd. had property No.174 Patpar Ganj Delhi and also in Jeet Engineering at Patparganj Delhi but I have closed my business of Jeet Engineering approximately in the year 1988). Since beginning the Respondent was the Director in Bamra Machines and Tools Pvt. Ltd. but later on she resigned with her own consent.”*

*“It is correct that the Respondent was a household lady as and when we lived together.(Vol. I have no knowledge whether the respondent used to do any work in my absence).”*

*“It is correct that I have leveled the averments of adultery against my wife with Sh. Mohd. Ansari but I cannot produce any document and evidence to proof my said averment. Again said I can produce the evidence and in this regard on the next date of hearing. I have no mentioned the particulars of the evidence in my list of witnesses.”*

*“I have not seen from my eyes the Respondent and Sh. Mohd. Ansari in compromising condition as they used to bolt the door from inside and therefore, I could not see them.”*

*“It is correct that I have filed a petition U/s 9 HMA against the respondent in the year 2008 which was duly compromised in the presence of Ld. Mediator. It is correct that I had compromised all such previous disputes with the Respondent as held till date. Thereafter I started residing with Respondent at 264, Gagan Vihar, Delhi. Vol. At first floor of the above-said house.”*

11. Learned counsel for the appellant/wife has placed reliance on **Suman Singh vs Sanjay Singh**, Civil Appeal No. 7114-7115 of 2014 and

*S.Hanumantha Rao vs S. Ramani* reported at 1999 3 SCC 620, the relevant paragraph of which is reproduced hereinunder:

“The last act of the respondent, which according to the learned counsel for the appellant, amounts to mental cruelty is that she lodged a complaint with the Women Protection Cell, through her uncle and as a result of which the appellant and the members of his family had to seek anticipatory bail. The respondent in her evidence stated that she had never lodged any complaint against the appellant or any members of his family with the Women Protection Cell. However, she stated that her parents sought help from Women Protection Cell for reconciliation through one of her relative who, at one time, happened to be the Superintendent of Police. It is on the record that one of the functions of the Women Protection Cell is to bring about reconciliation between the estranged spouses. There is no evidence on record to show that either the appellant or any member of his family were harassed by the Cell. The Cell only made efforts to bring about reconciliation between the parties but failed. Out of panic if the appellant and members of his family sought anticipatory bail, the respondent cannot be blamed for that. Thus, we are of the opinion, that representation made by the parents of the respondent to the Cell for reconciliation of the estranged spouses does not amount to mental cruelty caused to the appellant.”

12. Per contra, learned counsel appearing on behalf of the respondent/husband, Mr. Prabhjit Jauhar, has vehemently opposed the appeal. He submits that there is no infirmity in the order passed by the Family Court as various instances of cruelty have been made out. It is contended by the counsel of the respondent/husband that the parties have been residing separately for more than 23 years and therefore the entire substratum of the marriage has eroded away. It is stated that the appellant/wife has in the past broken the leg of the

respondent/husband's mother and has even threatened/attempted to kill her. Thereafter, the appellant/wife in her cross examination refused to comment on her relationship with her mother-in-law. The Family Court further rendered findings to the effect that the petitioner/wife was infact involved in an illicit relationship with a rickshaw puller.

13. It is also submitted by the learned counsel for the respondent that the Family Court has rightly relied upon the incident of 16.09.2008 wherein the appellant/wife had tried to implicate the husband in a false case by pouring kerosene oil on herself alleging that the respondent therein had intentions of killing her. Further, the testimony reveals that during the short period of compromise between the parties, there had been no resumption of cohabitation as the appellant/wife admitted in her cross-examination that since the year 2008, parties have not had a physical relationship.
14. It is further contended that the appellant/wife in order to put the respondent/husband through mental trauma and in order to defame him, alleged that he had killed their only son; and was involved in an intimate relationship with their daughter-in-law and many other women including one Gyan Kaur. It is therefore contended that a conclusion may be drawn that the aforementioned unfounded allegations as levelled by the appellant/wife are sufficient to rupture the nuptial bond between the parties. The appellant/wife has caused immense mental torture to the respondent/husband.

15. Reliance is placed by the learned counsel for the respondent on ***K. Srinivas Rao vs D.A. Deepa*** reported at 2013 (5) SCC 226, wherein it was held as under:

“14...Making unfounded indecent defamatory allegations against the spouse or his or her relatives in the pleadings, filing of complaints or issuing notices or news items which may have adverse impact on the business prospect or the job of the spouse and filing repeated false complaints and cases in the court against the spouse would, in the facts of a case, amount to causing mental cruelty to the other spouse.

26. Irretrievable breakdown of marriage is not a ground for divorce under the Hindu Marriage Act, 1955. But, where marriage is beyond repair on account of bitterness created by the acts of the husband or the wife or of both, the courts have always taken irretrievable breakdown of marriage as a very weighty circumstance amongst others necessitating severance of marital tie. A marriage which is dead for all purposes cannot be revived by the court's verdict, if the parties are not willing. This is because marriage involves human sentiments and emotions and if they are dried-up there is hardly any chance of their springing back to life on account of artificial reunion created by the court's decree...”

16. Reliance is also placed on ***Vinod Kumar Subbiah vs Saraswathi Palaniappan*** reported at 2015 (8) SCC 336 wherein it was held that if a spouse abuses the other as being born from a prostitute, this cannot be termed as “wear and tear” of family life. Summoning the police on false or flimsy grounds cannot also be similarly viewed.
17. Reliance is also placed on ***Savitri Pandey vs. Prem Chandra Pandey*** (2002) SCC 73, wherein the Apex Court while constructing the meaning of cruelty as a ground of divorce u/s 13(1) (ia) observed that Cruelty may be physical or mental. Mental cruelty is the conduct of

other spouse which causes mental suffering or fear to the matrimonial life of the other.

18. Reliance is also placed by the learned counsel for the respondent on *V. Bhagat vs D. Bhagat* reported at (1994) 1 SCC 337, *Vijay Kumar Ramachandra vs Neela Vijay Kumar* reported at (2003) 6 SCC 334, *R vs J* reported at (2018) DMC 803 (Del), *Samar Ghosh vs Jaya Ghosh* reported at (2007) 4 SCC 511, *Reena Devi vs Ravinder* reported at II (2017) DMC 428 (DB) (DEL), *Raj Talreja vs Kavita Talreja* reported at, *Meenakshi Mehta vs Major Atul Mehta* being FAO(HMA) 321/1998 at the High Court of Himachal Pradesh, *Kamlesh Kumari vs Vinod Kumari* reported at III (2011) DMC 673.
19. We have heard learned counsels for the parties and examined their rival submissions together with the pleadings and evidence on record.
20. We have examined the specific imputations of cruelty that the Family Court has referred to in the impugned judgment. We shall first examine the meaning of mental cruelty under Section 13 (1) (ia) of HMA. The Hon'ble Supreme Court in *V. Bhagat (supra)* has defined mental cruelty under Section 13 (1) (ia) of HMA as under:

“16. Mental cruelty in Section 13(1)(i-a) can broadly be defined as that conduct which inflicts upon the other party such mental pain and suffering as would make it not possible for that party to live with the other. In other words, mental cruelty must be of such a nature that the parties cannot reasonably be expected to live together. The situation must be such that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with the other party. It is not necessary to prove that the mental cruelty is such as to cause injury to the health of the

petitioner. While arriving at such conclusion, regard must be had to the social status, educational level of the parties, the society they move in, the possibility or otherwise of the parties ever living together in case they are already living apart and all other relevant facts and circumstances which it is neither possible nor desirable to set out exhaustively. What is cruelty in one case may not amount to cruelty in another case. It is a matter to be Determined in each case having regard to the facts and circumstances of that case. If it is a case of accusations and allegations, regard must also be had to the context in which they were made”.

21. In the facts of the present case, during the cross- examination of the appellant/wife, upon being questioned about her relationship with her mother-in-law, the appellant/wife stated *“I do not want to give reply about my relation with my mother-in-law Mrs. Niranjan, nor I want to disclose the reason, why I do not want to reveal the same.”* Such a deliberate concealment, when there are specific allegations of treating the mother-in-law with cruelty, would certainly result in an adverse inference against the appellant. Further, the appellant/wife could not say whether her mother-in-law came to meet her on 19.11.1993. In the next breath, she denied the suggestion that on 19.11.1993, she had come to meet her. The respondent/husband has filed a copy of the police complaint dated 19.11.1993 filed by his mother, wherein it was stated that on the preceding night, at about 11:00-11:30 PM, the appellant/wife had come to the mother-in-law’s house, threatening to kill her. However, she was unsuccessful as the door could not be opened. The mother-in-law dialled the emergency helpline 100 and the police arrived and took the appellant/wife out of the building. The respondent/husband’s mother alleged that the appellant/wife was still

threatening over the phone to kill the her. The mother-in-law further alleged that it was the appellant/wife who had earlier broken her leg.

22. As far as the submission with regard to the relations of the appellant/wife with Mohd. Ahmed Ansari, it is the contention of the respondent/husband that the appellant/wife did not discontinue her relationship with the said Mohd. Ahmed Ansari, even after the turmoil in her matrimonial life on that account. In his testimony, the respondent/husband relied upon the copy of the complaint dated 29.12.1995 as Mark B and the copy of the proceedings under Section 107/151 Cr.PC against Mohd. Ahmed Ansari as Mark C. The respondent/husband has filed several police complaints which are exhibited as Ex. PW-1/P1 to Ex. PW-1/P3 and Ex. PW-1/2 and Mark A and Mark B. Whereas, the appellant/wife in her cross-examination took inconsistent stands firstly by deposing that she did not remember the name of the rickshaw puller who used to take her children to the school. She straightaway refused that she knew any person by the name of Mohd. Ahmed Ansari whereas in her written statement and affidavit of evidence, she mentioned Mohd. Ahmed Ansari as the rickshaw puller who used to ferry the children to school. Not only this, even during the cross-examination Mohd. Ahmed Ansari was mentioned as the rickshaw puller who used to take the children to their school. Thus, the contradictory stand taken by her in her cross-examination shows that she tried to evade questions about her relationship with Mohd. Ahmed Ansari which in our considered opinion gives rise to an adverse inference against the appellant/wife.

23. Further, in the cross-examination, the appellant/wife stated that she was not aware of any kalandra that was filed by the police under Section 107/151 of CrPC regarding the quarrel between the respondent/husband herein, their son and Mohd. Ahmed Ansari. When it was put to her in her cross-examination that the said Mohd. Ahmed Ansari was residing in her house situated at Jitar Nagar, Delhi and that the petitioner and their son had a quarrel with him, as they had an objection against her relationship, she simply said she did not know. The attested copy of the kalandra under Section 107/151 CrPC dated 03.08.2002 which is marked as Mark C not only corroborates the testimony of the respondent/husband in this respect but also proves that the said Mohd. Ahmed Ansari was living in the house bearing No. B-61, Gali no. 18, Jitar Nagar, Delhi. The said discrepancies in the statement of the appellant/wife to blow hot and cold at the same time which cast nothing but only aspersions on her testimony and have fortified the case of the respondent/husband that she continued to have contact with Mohd. Ahmed Ansari despite objections being raised; not only by the respondent/husband but even her children's plea. All through her cross-examination she remained evasive and incoherent. In her cross-examination, she squarely refused to reply with regard to the character of the respondent/husband. She could not bring on record the actual bone of contention between them and tried to avert the answer to the questions put to her in her cross-examination. This does show friction between the parties regarding Mohd. Ahmed Ansari, however, we are unable to say any further in view of the cross-examination wherein the respondent/husband deposed the following:

“HMA 280/10

Cross- examination of PW-1 Shri. Saranjeet Singh dated 18.11.2011

*“...Except my aforesaid complaints I do not have any other proof which can show the adulterous relationship between the respondent and said Ahmed Ansari.”*

*“...It is correct that I have never seen the adulterous position between Respondent/Appellant and Ahmed Ansari because the door was always bolted from inside whenever the respondent and Ahmed Ansari remained in the room in compromising position...”*

Cross- examination of PW-1 Shri. Saranjeet Singh dated 19.11.2011

*“...It is correct that I have leveled the averments of adultery against my wife with Sh. Mohd. Ansari but I cannot produce any document and evidence to proof my said averment. Again said I can produce the evidence and in this regard on the next date of hearing. I have no mentioned the particulars of the evidence in my list of witnesses.”*

*“...I have not seen from my eyes the Respondent and Sh. Mohd. Ansari in compromising condition as they used to bolt the door from inside and therefore, I could not see them.”*

In view of what has been testified by the respondent/husband, it cannot be conclusively held that the appellant/wife was in an illicit relationship with Mohd. Ahmed Ansari. This friction, can however, be well termed as mental cruelty.

24. The respondent/husband also relied upon two incidents of 2008. The husband alleged that in the year of 2008, the wife filed a petition under Section 9 of HMA; the matter was compromised by him on

12.09.2008 in the mediation cell at Karkardooma courts, Delhi for the life and career of their grown up children. However, only four days after, on 16.09.2008, the appellant/wife tried to implicate the respondent/husband in a case by pouring kerosene on herself. The respondent/husband deposed that the appellant/wife was warned orally by the police, and no action was taken against her due to her old age and reputation of the family. We deem it appropriate to reproduce para 15 of the appellant/wife's written statement wherein she has replied to the said allegation of pouring kerosene.

*“15... it is correct that on 16.09.2008, the petitioner came to Gagan Vihar house and misbehaved with the respondent and children, on their asking him to set aside some thing as per his status, for maintaining them and also for (sic) finding suitable match for her daughters living with respondent. The petitioner instead of agreeing to do same thing for the respondent and children, poured (sic) kerosene oil on the respondent when the children were not at home. Respondent fearing harm, ran to the street outside, where she was beat mercilessly. Accordingly, the petitioner to get excused from his own acts, rang up police at number 100, on coming of the PCR, the matter was entrusted to police station, where statement of the respondent was recorded. Since the petitioner is a rich person, the police in his league did not take any action against him. It is correct that the petitioner to get rid of the respondent wanted to kill her. It is wrong that the respondent has alleged, wants to remove the petitioner from her ways, to live with Mr. Ansari.”*

The appellant/wife has alleged that it was in fact the respondent/husband who poured kerosene oil on her and subsequently she had to run outside the house wherein she was beaten mercilessly by the husband. The fact that the appellant/wife did not pursue the matter gives rise to an adverse inference that it was she who poured

the kerosene oil on herself. As far as the influence of the respondent/husband over the police is concerned, the same is not believable in view of the cross-examination of the appellant/wife wherein she has admitted that the respondent /husband was arrested by the police. The relevant portion of the cross-examination dated 29.01.2014 of RW-1, Smt. Ranjeet Kaur :

*“Q. Did police ever arrest (sic) or send (sic) the petitioner to jail on the complaints filed by you?*

*Ans. No. Voln. He was detailed in the PS for whole night for many times.*

*My husband remained in the custody of the police at PS Preet Vihar many times but I do not remember the date, month or year of the same. It is wrong to suggest that I am deposing falsely in the context and the petitioner was never detained by the police.*

*Q. I put to you that you have filed the following cases against your husband (1) u/s 125 Cr.P.C. pending before Ms.Vandan Jain, Ld. MM, KKD (2) Criminal Revision NO. 16/2013 before Sh. Sanjay Garg, LD. ASJ which has been decided. (3) Civil Suit NO.327/2012 before Sh.Raj Kumar, Ld.CJ, KKD which was withdrawn by you unconditionally (4) CC No.DV3/2013 pending before Ms.Vandana Jain, Ld.MM, KKD (5) CC2/2012 pending before Sh.SPS Laler Ld.MM, KKD (6) Case No.280/06 which was pending before the court of Ms.Poonam Chaudhary, Ld.MM and the same was withdrawn by you and (7) Petition bearing No.459/2008 u/s 9 HMA has been compromised by you. What you have to say?*

*Ans. Yes the same are correct.”*

25. The Family Court has rendered findings to the effect that the appellant/wife has filed several petitions in this court against the respondent/husband. The appellant/wife has filed certified copies of

the complaint filed by her under Section 300 CrPC along with the copy of the FIR no 266/16 under Section 306/34 IPC. In the said complaint, the appellant/wife alleged an illicit relationship between the respondent/husband and his daughter-in-law i.e Namrata, who is the widow of their deceased son Amarpreet Singh. During the cross-examination of the appellant/wife, she admitted to have filed as many as seven cases in various courts, besides a writ petition in this court against the respondent/husband and his family members. When she was asked as to how many times had she meet her daughter-in-law, she replied that she had met her for the first time at the time of the death of her son, Amarpreet, at the cremation ground. We agree with the finding rendered by the Family Court that the appellant/wife left no stone unturned to malign the reputation of the respondent/husband by levelling baseless and unfounded allegations. If she truly believed that the said allegations were true, she should have pressed the matter till it attained finality.

26. The appellant/wife has gone to the extent of making the allegation against the respondent/husband that he along with their son-in-laws got their son, Amarpreet Singh murdered on 22.07.2013. However, in her cross-examination she stated that she did not know the name of the said son-in-laws. She stated *"It is correct that our only son Amarpreet Singh died on 22.07.2013. Vol. I state that he was murdered by the father/petitioner and his son-in-laws."* The Family Court perused the status report filed in the court wherein the autopsy surgeon opined that, *"In my opinion, to the best of my knowledge and belief, death in this case was due to Aluminum Phosphide poisoning."* It is our

considered opinion that making unfounded allegations on your spouse, specially alleging the murder of your son, is an unparalleled form mental torture, and amounts to very grave form of mental cruelty. The appellant/wife failed to bring any cogent evidence, nor was she able to prove the allegations through her testimony. Levelling such severe allegations cannot be treated as ordinary wear and tear married life. They are bound to stigmatize the character of the recipient and cause immense mental agony and misery to the sufferer.

27. In view of Section 20 of HMA, the court is empowered to act upon unfounded allegations in the pleadings and the same maybe treated as evidence. The unsubstantiated allegations averred by the appellant/wife are sufficient to rupture the nuptial bond between the parties, and cause immense torture, particularly when the said allegations were not proved in the concerned court of law. We would like to extract Section 20 of HMA, which reads as under:-

*'20. Contents and verification of petitions. -*

*(1) Every petition presented under this Act shall stated as distinctly as the nature of the case permits the facts on which the claim to relief is founded [and, except in a petition under Section 11, shall also state] that there is no collusion between the petitioner and the other party to the marriage.*

*(2) The statements contained in every petition under this Act shall be verified by the petitioner or some other competent person in the manner required by law for the verification of complaints, and may, at the hearing, be referred to as evidence.'*

28. In the case of **Jayanti vs Rakesh Mediratta** reported at 2016 (4) CLJ 498 Del, this court held as under :

“6. In matrimonial proceedings, the pleadings assume grave significance. In view of Section 20 of Hindu Marriage Act, 1955 the Court is empowered to act upon unfounded allegations in the pleadings treating the same as evidence.”

29. Further, the Family Court also rendered a finding to the effect that the appellant/wife had alleged in her written statement that the respondent/husband was keeping alliance with other women, including his daughter-in-law. However, she failed to substantiate the said allegations with any kind of evidence. She further alleged that the respondent/husband left the house in 1994-1995 to live in Patparganj, in his own house and factories with another lady Smt. Gyan Kaur. Whereas, in her cross-examination she stated that the respondent/husband was having relations with one Smt. Gyan Kaur who she had met only once in the factory of the respondent/husband and did not know her husband's address and never had any conversation with her. She was not aware of the illicit relationship of the respondent/husband with other women. The appellant/wife did not make any efforts to prove any of her imputations against the respondent/husband. She clearly stated that she does not want to reply to the question, when she was asked whether she had any complaint against her husband. The appellant/wife only wanted to assassinate the character of the respondent/husband. She has unceremoniously shirked from the responsibility of proving the allegations by adducing evidence of any witness or by producing any documents. In her incoherent deposition, she went on to depose that it might have been possible that the written statement filed by her could have been signed by anybody else as even her ITRs were being signed and filed by

somebody else in her name, therefore, she could not say whether the written statement filed in court bears her signature.

30. The law is well-settled that if the wife makes wild and unsubstantiated allegations on the character of the husband by calling him a womanizer, by humiliating him in public and by filing frivolous litigation; it would undoubtedly cause a feeling of deep anguish and agony on the husband. This attitude of causing humiliation and calculated torture on the part of the wife to make the life of the husband miserable amounts to causing grave mental cruelty. In the case of *Vishwanath vs Sau Sarla Vishwanath Agarwal*, reported at 2012 (7) SCC 288, it was held as under:

“In our considered opinion, a normal reasonable man is bound to feel the sting and the pungency. The conduct and circumstances make it graphically clear that the respondent-wife had really humiliated him and caused mental cruelty. Her conduct clearly exposit that it has resulted in causing agony and anguish in the mind of the husband. She had publicised in the newspapers that he was a womaniser and a drunkard. She had made wild allegations about his character. She had made an effort to prosecute him in criminal litigations which she had failed to prove. The feeling of deep anguish, disappointment, agony and frustration of the husband is obvious. It can be stated with certitude that the cumulative effect of the evidence brought on record clearly establish a sustained attitude of causing humiliation and calculated torture on the part of the wife to make the life of the husband miserable. The husband felt humiliated both in private and public life. Indubitably, it created a dent in his reputation which is not only the salt of life, but also the purest treasure and the most precious perfume of life. It is extremely delicate and a cherished value this side of the grave. It is a revenue generator for the present as well as for the posterity. Thus analysed, it would not be out of place to state that his brain

and the bones must have felt the chill of humiliation. The dreams sweetly grafted with sanguine fondness with the passage of time reached the Everstine disaster, possibly, with a vow not to melt. The cathartic effect looked like a distant mirage. The cruel behaviour of the wife has frozen the emotions and snuffed out the bright candle of feeling of the husband because he has been treated as an unperson. Thus, analysed, it is abundantly clear that with this mental pain, agony and suffering, the husband cannot be asked to put up with the conduct of the wife and to continue to live with her. Therefore, he is entitled to a decree for divorce.”

31. Further, the learned counsel for the appellant/wife had alleged that the photocopies of the complaints filed by him as well as by his mother to prove the ground of cruelty were not proved by the respondent/husband in accordance with Section 61, 63 and 65 of the Indian Evidence Act, 1872. Therefore, in the absence of their production in court, the Family Court has erred in granting divorce between the parties. However, in the facts and circumstances of the present case, photocopies of complaints dated 22.06.1998, 29.06.1998 and 28.07.1998, 19.11.1993, 23.11.1998, 29.12.1995 have been proved as Ex. PW-1/P1 to Ex. PW-1/P3 and Ex. PW-1/2 and Mark A and Mark B. Moreover, the said complaints are not the only material on record to prove the cruelty done by the appellant/wife against the respondent/husband.
32. Many police complaints have been filed by the parties raising several allegations against each other. Only a few of those complaints have been exhibited in the proceedings. Although the kalandra under Section 107/151 CrPC dated 03.08.2002 has not been proved, we

deem it necessary to reproduce the following paragraph from the cross-examination dated 29.01.2014 of RW-1, Smt. Ranjeet Kaur :

*“Q. Did police ever arrest (sic) or send (sic) the petitioner to jail on the complaints filed by you?*

*Ans. No. Voln. He was detailed in the PS for whole night for many times.*

*My husband remained in the custody of the police at PS Preet Vihar many times but I do not remember the date, month or year of the same. It is wrong to suggest that I am deposing falsely in the context and the petitioner was never detained by the police.*

*Q. I put to you that you have filed the following cases against your husband (1) u/s 125 Cr.P.C. pending before Ms.Vandan Jain, Ld. MM, KKD (2) Criminal Revision NO. 16/2013 before Sh. Sanjay Garg, LD. ASJ which has been decided. (3) Civil Suit NO.327/2012 before Sh.Raj Kumar, Ld.CJ, KKD which was withdrawn by you unconditionally (4) CC No.DV3/2013 pending before Ms.Vandana Jain, Ld.MM, KKD (5) CC2/2012 pending before Sh.SPS Laler Ld.MM, KKD (6) Case No.280/06 which was pending before the court of Ms.Poonam Chaudhary, Ld.MM and the same was withdrawn by you and (7) Petition bearing No.459/2008 u/s 9 HMA has been compromised by you. What you have to say?*

*Ans. Yes the same are correct.”*

33. Upon perusal of the pleadings and evidence led by the parties, and examination of the reasoning of the Family court, we find that the appellant/wife has not been able to substantiate the allegations levelled by her. Cruelty on part of the appellant/wife has been made out. The parties have been living separately since 1995. It has been more than 24 years and the entire substratum of the marriage has eroded away.

Even when the parties resided together from 12.09.2008 after the mediation settlement, they could not sustain the meditation settlement even for four days. There was no resumption of cohabitation in the said period. The appellant/wife has levelled unfounded allegations against the respondent/husband of committing the murder of their son, being in an illicit relationship with his daughter-in-law and one Smt. Gyan Kaur. She has filed frivolous litigation, as far as seven cases in various courts, besides a writ petition in this court against the respondent/husband and his family members. The allegations and the counter-allegations are indicative of the intense rancour and hatred. Several inter se cases are pending. There has been an irretrievable breakdown of the marriage. We are of the considered opinion that a refusal to sever the marriage would cause irreparable harm and cruelty to the respondent husband.

34. We find no infirmity in the order passed by the Family Court. There is no merit in this appeal, and the same is accordingly dismissed.

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35. In view of the order passed in the appeal, the applications also stand dismissed.

**G.S.SISTANI, J.**

**JYOTI SINGH, J.**

**NOVEMBER 20, 2019//**